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May 19, 2006

Western Washington Municipal SW Comment  
WA Department of Ecology  
Water Quality Program  
P.O. Box 47696  
Olympia, WA 98504-7696

**Subject: Comments on the Draft NPDES Phase II Western Washington permit language**

Thank you for the opportunity to comment on the latest draft NPDES Phase II permit. Federal Way has been working with other Phase II municipalities along with representatives from the Association of Washington Cities and Washington State Association of Counties to review the permit language. As such, we believe Federal Way's comments will be consistent with those received from across the Puget Sound region.

While we recognize that this is only a draft permit and that the final permit is yet to be issued, we believe that there is a considerable amount of work yet to be done on the permit before it should be finalized. We encourage Ecology to strongly consider the issues contained in this letter as well as in the attached line-by-line comments supplement and actively engage more municipalities and the Legislature in resolving the issues prior to the release of the final permit.

Federal Way stands ready to continue to participate with Ecology and other interested parties in developing a scientifically valid, equitable, and defensible permit. We encourage Ecology not to be driven by an arbitrary date to the detriment of resolving these issues as it may likely result in delays due to appeals by many parties.

We believe management techniques and program components included in the NPDES Phase II permit should be cost effective as well as attainable. As it currently stands, we do not believe this permit is either, based on: disproportionate stormwater impacts to re-development sites based upon the pre-forested conditions requirement; annual reporting requirements that will require extensive resources for tracking and reporting on activities, training, annual expenditures, etc.; the stated intention for future permits to conduct effectiveness monitoring on approved BMP's from Ecology's Manual; continued inclusion of Ecology's Western Washington Stormwater Management Manual by reference when it is supposed to be a guidance document; and disproportionate impacts to

future road maintenance and transportation projects, including bike paths, by the manner in which current impervious surfaces are classified when re-surfaced.

The AWC has facilitated meetings with Ecology staff including Director Jay Manning to express concerns on two major points: redevelopment requirements and overall water quality monitoring provisions of the permit.

Based on these discussions and a meeting held on April 27<sup>th</sup>, it is our understanding that Mr. Manning will be requesting a formal written response from the Attorney General's office on the issue of "takings" due to increased stormwater requirements on re-development sites. We look forward to further discussions on this matter and a clear determination by Ecology on this issue.

Director Manning has indicated a willingness to devote staff time to develop a larger water quality monitoring plan consistent with the AWC proposal (see attached). This would appear to mean changes may be made to the permit based on follow up discussions after the May 19<sup>th</sup> deadline. We encourage Ecology to continue working with interested parties on the following major issues prior to issuance of the general permit.

**Major issues of concern:**

**Monitoring:** We request that Ecology form a Stormwater Partnership consisting of staff from Phase I and Phase II jurisdictions, environmental groups, other interested stakeholders, and Ecology staff from the Water Quality (NPDES) Program, Environmental Assessment Program, and a policy level staff person that spans internal program divisions. This on-going partnership would be responsible for:

- Coordinating with the State on a stormwater baseline and trend assessment monitoring strategy at a watershed level that would link and coordinate with salmon recovery and Puget Sound Initiative programs.
- Developing and replacing existing monitoring language in Phase I and II permits with language that reflects a monitoring program that would provide:
  - Meaningful management information for improving BMP selection and making other stormwater management decisions
  - Reliable indicators on whether SWMP actions were making reasonable progress towards desired outcomes
  - Coordination and analysis of information across jurisdictions and agencies through the partnership to reduce redundancies, realize efficiencies, and improve transparency

Federal Way, along with a multitude of other municipalities, is requesting Ecology convene the Partnership as soon as possible to allow timely issuance of the NPDES Municipal stormwater permits. Federal Way staff are willing to assist in convening this partnership.

**Pre-development, forested conditions – and legal ‘takings’ concerns:** December 8, 1999 Federal Register Publishing of the Phase II rules page 68761 states:

*“Pre-development refers to runoff conditions that exist onsite immediately before the planned development activities occur. Pre-development is not intended to be interpreted as that period before any human-induced land disturbance activity has occurred.”*

The language in the current DOE permit as drafted essentially requires that stormwater flows for new development and redevelopment be mitigated to meet a standard of *pre-developed, forested* conditions. This is directly in conflict with the intent of the Phase II rules as reflected above. Although S5.C.4 has been modified to state “To the extent allowable under federal and state law...” the intent is still clear that Ecology wants Permittees to require developers to design redevelopment projects with forested conditions as the baseline.

We believe that in urban and urbanizing environments, this standard is unattainable and raises serious legal concerns. Specifically, we have consulted with our City Attorney who believes that mitigation requirements outlined in the draft permit would leave us very vulnerable to “takings” claims.

Specifically, cases cited include the *Nollan vs. California Coastal Commission* and *Dolan v. City of Tigard* cases, as well as a March 1995 memorandum from the State Attorney General’s Office that reads in part, “...a permit condition which imposes substantial costs or limitations on property uses could be a taking. In assessing whether a regulation or permit condition constitutes a taking in a particular circumstance, the courts will consider the public purpose of the regulatory action along with the extent of reduction in use of and *economic impact on the property (emphasis added)*. The burden on the property owner must be roughly proportional to the adverse public impact sought to be mitigated.”

Ecology’s own consultant, Herrera and Associates concluded in a 2001 Cost Analysis Report that the increased 2001 standards would result in a typical 1-acre commercial development seeing a 1290% increase in stormwater mitigation costs. The 2005 changes to the manual did not change this analysis. This would appear to contradict the 1995 Attorney Generals Office guidance and may, by itself, require compensation.

While we understand Ecology’s desire to restore as much of the natural drainage system through flow modification and water quality improvements, the proposed permit language would place each jurisdiction in jeopardy of legal challenges. Therefore we cannot support the permit language the way it is currently written.

**“Use of Ecology Manual as law, not guidance”:** The permit requires application of the 2005 Stormwater Management Manual for Western Washington (Manual) at least in part and depending on interpretation, in whole. Requirements to use the Ecology manual through the permit is contrary to a previous determination by Ecology that the manual is

a guidance document only (see attached Policy Statement from Ecology). We believe that inclusion by reference can be interpreted to mean the 2005 Manual is now a full, legal part of the permit thereby avoiding the rule making process Ecology needs to follow if it is to be anything other than guidance. While the permit does allow for an alternative to be used, we believe the burden of proof is too great and that the alternative will still be compared to the 2005 Manual leading to a defacto implementation of Ecology's 2005 Manual through the permit.

As an example, S5.C.4.a.ii, requires permittees to develop a site planning process and BMP selection and design criteria that will protect water quality, reduce the discharge of pollutants to the maximum extent practicable and satisfy the State requirement under 90.48 RCW for all known and reasonable technologies (AKART) prior to discharge. Permittees must document how the criteria and requirements will protect water quality, reduce the discharge of pollutants to the maximum extent practicable, and satisfy State AKART requirements. Permittees who choose to use the 2005 Manual for Western Washington, or an equivalent manual approved of by the Department under the Phase I permit, may cite this choice as their sole documentation to meet this requirement.

No process has been established for Phase II permittees to develop and submit for approval of an equivalent manual. According to Ecology staff, no process is envisioned to be developed and *there are no staff* available to review an equivalent manual should one be submitted by a Phase II jurisdiction. We have essentially two choices: Ecology manual or, hopefully, a Phase I municipal manual (but even that cannot be with any modifications for local conditions). Therefore, Ecology's manual is being implemented through the permit without going through the rule making process.

The permit sets up a dynamic that makes it difficult, if not impossible, for an applicant to apply any other manual to a development site without extensive and expensive justifications that have little chance of making it through an as-yet unknown equivalency review process.

**Annual Cost Tracking and Reporting:** Federal Way stands ready to provide Ecology with detailed budget expenditures and revenues in accordance with the adopted budgeting practices in accordance with the State Auditors Office requirements but we are concerned that the level of detail required in the permit exceeds these standards and will require either a reworking of our cost accounting practices or at a minimum an extensive effort to provide the details required.

As an example, under the expenditure reporting we will be required to "Include direct costs (e.g. phone, field and office supplies, etc.) and depreciation costs (e.g. vehicles and equipment) for each component. Allocate overhead costs for the entire stormwater program to each cost category. Include applicable costs from all departments that are responsible for actions required under the permit". These are only a few of the examples from the permit language that concern Federal Way.

We are concerned that the permit requirements to track detailed expenditures and report on them annually is not a valid measure to gauge the Maximum Extent Practicable (MEP) standards established in this permit as is listed in the Expenditure Report Form 1.2 description. We are concerned that our expenditures will be compared against other jurisdictions whose focus is on different aspects of stormwater management based on their community needs.

We question whether this part of the permit should be eliminated in its entirety or reduced to a check list with gross scale costing as was presented to the Legislature in 2003 by Ecology.

**Testing requirements:** As relayed previously, we believe that if Ecology wants all existing BMP's subjected to testing, the Department should bear the cost and responsibility for that testing, not Phase II permittees (S8.C.c). We request this section be deleted in its entirety.

We encourage you to consider the monitoring counter proposal submitted by the AWC and supported by many jurisdictions. Development of a larger, holistic, monitoring program by Ecology, jurisdictions, environmental groups and others will further the science of stormwater treatment, reduce unnecessary duplication of efforts, and eventually lead to a better understanding of what to treat, where to treat it, and how to treat it.

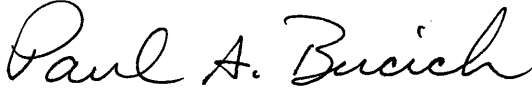
**Fiscal, liability, and DOE staffing concerns:** It is our understanding that once the final permit is issued, compliance with the permit affords municipalities with a legal "shield" to some extent from third party lawsuits. As such we are very interested in ensuring that language in the permit is attainable given reasonable time frames for implementation. Additionally, we would anticipate that Ecology would issue a letter of compliance upon review of our annual report.

We are concerned that Phase II jurisdictions will be paying new permit fees, in Federal Way's case approximately \$34,000 per year, and yet Ecology will not have staffing in place to properly review the Phase II programs that will be submitted. Nor will Ecology issue an annual certification of permit compliance. This leaves us wondering what we are paying for, and whether the permit will provide Phase II jurisdictions any coverage from third party lawsuits.

In closing, we would like to repeat our message that we encourage Ecology to review these more comprehensive issues when writing the final permit and involve more communities in resolving them prior to the release of the permit. We encourage you not to be driven by an arbitrary permit issuance date to the detriment of resolving these issues. If necessary and based upon the scope of the comments received, Ecology should consider issuing a *second* draft permit before the final is issued.

Thank you for the opportunity to comment on the draft NPDES Phase II permit. We look forward to working with Ecology on the permit language. Attached please find the City of Federal Way's line-by-line specific comments on the draft permit.

Sincerely,

A handwritten signature in cursive script that reads "Paul A. Bucich".

Paul A. Bucich, P.E.  
Surface Water Manager

Enc. (5)

Cc: Derek Matheson, Interim City Manager  
City Council  
Cary M. Roe, P.E., Public Works Director  
File: NPDES Phase II Permit Comments

## **NPDES Permit Alternative Proposal**

Below is an alternative proposal to Ecology's *'forested predevelopment condition.'* The proposal was developed with staff from a number of Phase I and Phase II municipalities. This alternative is not intended to supplant other sections of the preliminary draft permit, including those relating to direct discharges. There are 4 parts to the alternative proposal and, taken together, would replace Ecology's predeveloped land cover condition requirement in the Phase I and II (Western Washington) NPDES municipal stormwater permits.

### **Alternative Proposal**

#### ***Predeveloped Land Cover Condition Requirement***

Stormwater discharges shall match developed discharge duration to pre-developed durations for the range of pre-developed discharge rates from 50% of the 2-year peak flow up to the full 50-year peak flow. The predeveloped land cover condition to be matched shall be *existing (i.e., current) land cover*.

#### ***Baseline standard***

The predeveloped land cover condition of "existing (i.e., current) land cover" is intended to be a baseline standard for the NPDES Phase I and II permits. Communities can have a different standard or standards for a number of different reasons, such as when basin studies and/or community values identify the need for a different standard to meet watershed goals, etc.

#### ***On-site stormwater management BMPs, i.e., LID, infiltration, recharge, etc***

For new developments and redevelopments, require runoff from existing and new impervious surfaces/cleared areas to be infiltrated or dispersed through vegetated areas to the maximum extent practicable based on project scope and without causing flooding, erosion or other damaging impacts.

#### ***Redevelopment Runoff Treatment Trigger***

Minimum requirements for runoff treatment from new and replaced impervious surfaces when the total of new plus replaced impervious surfaces is 5,000 square feet or more, and the valuation of proposed improvements –including interior improvements – exceeds 50% of the assessed value of the existing site improvements.

**City of Federal Way**  
**NPDES Phase II**  
**Draft Permit Comments**  
**May 19, 2006**

1. Table of Contents – page numbering is innaccurate.
2. Page 4, Table 1. – S8 purports to require submittal of monitoring site identification only once but page 36 lines 3 through 12 require submittal in the third annual report. Is this a timing problem?
3. Page 5, S1.B. – Items 2 through 5 are subsets of item 1. Should be a, b, c, etc. Item 6 as listed should be numbered 2 and so on.
4. Page 8, lines 9 and 18 – S2.D.c should be S1.D.2.c. Line 18 should list S1.D.2.
5. Page 8, line 36 – S1.B.3 will need to be re-ordered per comment 3 above.
6. Page 9, line 30 – Municipalities are only responsible for discharges from their municipal separate storm sewer systems (MS4s) and therefore we request “into and” be deleted from line 30. Federal CWA regulates discharges from the system, not into it. Potentially sets up municipality to be legally responsible for stormwater discharges from private property into the public drainage system. Even if not intended as such, concern that third party could read it this way.
7. Page 10, lines 12-14 – This is clear that emergency fire fighting activities are allowed to discharge to the storm system under specific conditions, however the issue of training exercises remains.
8. Page 11, lines 5-7 – Delete S4.A entirely. This section will make MS4’s subject to a state law provision (RCW 90.48.520) specifically related to wastewater treatment. Delete all references to RCW 90.48.520 from the definition of AKART. Attached is a summary of an analysis conducted by another jurisdiction on this issue. Expansion of stormwater permitting requirements into the arena historically reserved for POTW’s (wastewater treatment plants) is alarming as that has never been the intent of the Phase II permit.
9. Page 11, line 13 – add the following “...discharge of pollutants *from new developments* to the maximum extent practicable...” to clarify that this does not mean retrofitting of the MS4 existing system.



10. Page 12, line 9 – Please clarify when the annual update needs to commence, 2008 or 2007?
11. Page 12, line 18 – Costs for development and implementation of the SWMP will be different for every municipality based on what actions they are currently doing vs. what the permit may require. Comparison will be difficult between permittees. Cost tracking is not a valid measure of permit compliance. Request this section be deleted as it will serve no net purpose but will be time consuming and require significant resources to accomplish on an annual basis.
12. Page 12, line 29 – After “protect water quality.” Insert “Compliance with the permit and implementation of the SWMP is deemed to be in compliance with this MEP requirement, state AKART requirement and requirement to protect water quality.” We believe that it is important to clarify the permit compliance standards since various sections such as G20 Non-Compliance Notification and G9.A were clearly taken from POTW NPDES permits requiring compliance with technological effluent limitations and related to “bypasses, upsets, and maintenance-related conditions affecting effluent quality – terms commonly associated with point discharges from wastewater treatment plants.
13. Page 13, lines 11-13 – *“The education and outreach program shall increase regular adoption of the behaviors in the chosen target audiences by four years after the effective date of this Permit.”* While we concur that changing behaviors is the ultimate goal of this program, given the problems associated with social marketing (i.e. the transient nature of market audiences, the need to pretest existing knowledge and behaviors and problems determining readership/participation), we find this language too restrictive and easily subject to 3<sup>rd</sup> party legal challenges. We ask that this language be removed from the final permit. It is our opinion that the preceding sentence (Line 7 *“The outreach program shall be designed to achieve measurable improvements...”*) is clear enough that it will result in the intended effect (a measurable change in behaviors) without opening up permittees to 3<sup>rd</sup> party legal challenges.
14. Page 14, line 15 – While we understand the desire to see if education efforts are making an affect, this type of effort has had a poor track record across the nation. This effort can be very expensive to conduct without reasonable parameters established and mainly leads to few changes. We request this section be deleted. If it is not deleted, the a completion due date needs to be assigned.
15. Page 14, lines 29-34 – We are still uncertain as to what this section intends. It seems unreasonable for well established programs to have to create opportunities for the public to participate in the decision making processes involving the development, implementation and update of the Permittee’s

entire SWMP. Many components of a surface water management utility are not “written up” but instead have evolved over time, e.g., Federal Way’s catch basin evaluation program and our curb side catch basin marker program. Suggest this section be changed to only address new components required under the Phase II permit that jurisdictions are not already doing.

16. Page 15, line 31 – Should be v., not vi.
17. Page 16, lines 22-24 – Federal Way does not own or operate a water utility. Therefore we do not control irrigation runoff. This would appear to be outside of our scope for the permit and control. Suggest this be clarified that it applies to jurisdictions with a water utility. Lakehaven Utility District would be the appropriate agency to develop public education and conservation efforts.
18. Page 17, lines 28-32 – By including this document by reference, it has appears to have been given the full force of law under the Phase II permit provisions including third party lawsuit liability. Further, since specific sections are not referenced, the entire document now becomes the standard for the IDDE program. Who will make the determination of “comparable methodology”? Suggest this section needs more work and a process developed for determining comparable methodologies.
19. Page 18, line 12 – Bulleted item describes methods for investigation of illicit “connections”. It does not specifically include other types of discharges that may result from diffuse sources that would not necessarily be an illicit “connection”. Suggest changing “connection” to “discharge”.
20. Page 18, line 35 – Please provide clarification on what constitutes an “appropriate training” program for field staff and by whom.
21. Page 19, line 13 – See cover letter regarding position on legal takings on redeveloped sites.
22. Page 20, line 13 – Requiring jurisdictions to allow low impact development alternatives ignores the serious concerns of longevity, maintenance, access, and soil suitability. Request that this be up to the individual jurisdiction to evaluate and include after public discussion.
23. Page 21, lines 27-29 – See cover letter related to inclusion of references to 2005 Stormwater Management Manual for Western Washington.
24. Page 22, lines 1-9 – The requirement to inspect catch basins annually in this section appears to conflict with S5.C.5.d where catch basins are required to be inspected at least once before the end of the permit term. Suggest removing catch basins from this section, S5.C.4.c.iii.
25. Page 22, lines 27-29 – It is not the responsibility of the municipalities to administer the DOE’s NOI for Construction Activity and/or copies of the NOI

for Industrial Activities. Placing this in the permit puts an unwelcome burden on our staff and is not directly related to our NPDES Phase II MS4 program. Failure to make copies available places us in a position of violating our permit. Suggest you remove this section.

26. Page 32, Section S7 - Clarify and revise references in Section S7 TMDL and Appendix 2 to refer to "applicable MS4 elements of the TMDL Detailed Implementation Plan (DIP)" whenever there is a reference to TMDL as a permit condition because the permittee is required to implement applicable MS4 elements from the TMDL Detailed Implementation Plan (DIP) and not the TMDL.
27. Page 33, S8 Monitoring – see cover letter for discussion on monitoring approach. City's position remains constant that a holistic monitoring program should be developed after extensive discussion by advisory panel.
28. Page 33, line 17 – Reference should be to S5.C.3.c.iii.
29. Page 33, line 29 – page 36, line 3 – Delete entire section. See cover letter and previous communications with Mr. Manning on what we believe to be a better way of conducting monitoring across the Puget Sound and the State.
30. Page 33, line 35 – change three to “two”.
31. Page 33, line 36 – Delete “and runoff treatment Best Management Practice (BMP) effectiveness monitoring”. See comment 33 below.
32. Page 34, line 35 – If entire section not deleted, then suggest paragraph be ended at line 37 after first sentence. Delete from line 37 to page 35, line 13 inclusive.
33. Page 35, line 14 – delete S8.C.1.c. As stated previously, testing of Ecology approved BMP's for effectiveness is not a responsibility of local jurisdictions. Ecology should pursue funding and studies independent of the NPDES permit.
34. Page 36, lines 10-12 – delete.
35. Page 36, S9, line 19 – reference year should be 2007.
36. Page 37, lines 29-30 – It is reasonable to expect permittee's to submit an annual copy of documents that show compliance with the permit requirements to Ecology, however based on the Phase I permittee's experiences, Ecology has come back time and again to request additional copies when they cannot find their original sets. Further, exclusion by Ecology to paying copy costs through this permit circumvents the state laws allowing us to recover reasonable printing costs. Suggest changing this to clarify that one complete set will be delivered to Ecology at no cost to Ecology.

37. Page 37, General Conditions – It is clear that this entire section was lifted from standard permitting language for wastewater treatment plants. Suggest Ecology go through it to remove inappropriate references to sewer lines, upsets, bypasses, etc.
38. Page 39, line 13 – G9. Monitoring – this section was obviously developed for wastewater treatment plants and needs to be cleaned of treatment plant language. For example, what does “representative volume” mean relative to stormwater investigations for IDDE? YSI, TidBit, macroinvertebrate sampling, Stream Team and all other independent sampling efforts are not a part of the permit’s “required monitoring”, and do not have to comply with this section; although these stormwater monitoring efforts conducted during the reporting period must be reported per S.8.B.
39. Page 39, line 33, D. Test Procedures – this section does not fully apply to stormwater as it was developed for wastewater treatment plants, e.g., is colormetric field testing (i.e. CWA manual) “required monitoring”. If so, then Test Procedure (40 CFR Part 136) requirements cannot be applied to colormetric field testing. 40 CFR Part 136 deals with specific EPA-approved laboratory analysis/QC procedures and also specifications for required sample containers, preservation techniques and holding times. These do not apply to stormwater across the board. YSI, TidBit, macroinvertebrate sampling, Stream Team and all other independent sampling efforts are not a part of the permit’s “required monitoring”, and do not have to comply with the Test Procedure requirement, although these stormwater monitoring efforts conducted during the reporting period must be reported per S.8.B.
40. Page 40, line 3 E. Flow Measurement - Goes back to G.9.A - What does “representative of volume” mean? And does this apply to all “required monitoring” per S.8.A? If so, then how does one collect a water sample during an illicit discharge investigation that incorporates flow measurement devices that ensures the accuracy and reliability of measurements of the volume of monitored discharges? YSI, TidBit, macroinvertebrate sampling, Stream Team and all other independent sampling efforts are not a part of the permit’s “required monitoring”, and do not have to comply with the Flow Measurement requirement, although these stormwater monitoring efforts conducted during the reporting period must be reported per S.8.B.
41. Page 45, lines 1-7 – this definition appears to allow for an equivalent document but then states that even a conditionally approved manual may still not be adequate and will have to comply with Appendix 1. If it is not equivalent, it should not be given any approval. Conversely, if given conditional approval, then there should need to be no further discussion of Appendix 1.
42. Page 47, line 2 – need a paragraph return before “Permittee”.

## Appendix 1:

1. At numerous locations throughout the appendix, references are made to “the manual”. Recommend clarifying which manual, e.g. 2005 Ecology’s Western Washington Stormwater Management Manual, as well as the specific chapter and/or section of the chapter. Per Federal Way’s cover letter, we believe inclusion of the 2005 Ecology manual by reference results in avoidance of state rule making requirements. While it is understandable that Ecology wishes to use a document that is, in their opinion, Best Available Science, Ecology has also stated that the Manual is a guidance document only. Inclusion in the permit creates a conflict that should be resolved by taking the 2005 Manual through the rule making process.
2. Page 18, Minimum Requirement #6 – The language in this section and on page 23, does not distinguish between pre-existing conditions and the creation of new pollution generating or impervious surfaces. It is our opinion that applying these standards on pre-existing conditions is a “takings” and is illegal without compensation. Please revise this section to address only projects creating new pollution generating or impervious surfaces. Clarify that change of use on a site can result in the entire site being brought up to current water quality treatment standards if pollutant loadings are increased. Federal Way has ordinances in place which can be reviewed by Ecology staff that addresses this issue.
3. Page 20, first full paragraph – Please clarify what the SMMWW refers to in this paragraph.
4. Page 22, first paragraph – Please clarify what document contains Appendix I-E – Flow Control....
5. Page 22, last line – did Ecology bold the text for a reason? Suggest the bold font be eliminated.
6. Page 23, third bullet – this requirement will capture many projects falling below the 10,000 sq. ft. threshold. Is this Ecology’s intent?
7. Page 24, second paragraph – The last line requires pre-developed conditions to be forested. We believe this creates a conflict between state laws and the permit conditions. Change the language to indicated for pre-developed sites, the existing conditions will be used in analysis of stormwater requirements. For undeveloped sites, the pre-developed conditions shall be that which exists on the site at the time of application unless there has been illegal logging or land clearing activities in the past. In which case, the pre-developed conditions shall be viewed as forested.
8. Page 25, Applicability – We believe this language is overly broad for two reasons: 1) the use of the word “indirectly” without applying a limiting factor, such as distance, makes this section’s requirements applicable to *all* projects

whose stormwater eventually makes its way into a wetland (for Federal Way this is most of the city). 2) This permit does not include a definition of wetland, nor does this section distinguish between regulated and unregulated wetlands and therefore would include all classifications and sizes of wetlands. Please revise the applicability portion of this section to narrow the scope of applicable projects by establishing limiting factors for the term “indirectly” and by creating a definition of a wetland (including a size constraint) or limit the applicability to only regulated wetlands.

9. Page 25, Standard Requirement – If the developer is to use forested conditions as the standard, why is Ecology allowing the existing land cover condition to be used when evaluating the hydrologic conditions resulting in discharge to the wetland? This is inconsistent with re-development requirements elsewhere in the permit. We would like existing conditions to be used for all re-development projects. Ecology should maintain a uniform standard for flow control.

### **Appendix 3:**

1. Overall format of report: Annual reporting should be a simple checklist of activities as it relates to the permit requirements. Financial data should not be reported in the extreme detail indicated in this appendix. Many jurisdictions do not have the capability of tracking financials to the degree being asked by Ecology in the permit, and money spent on a stormwater program should not be used as an indicator or measure of whether the jurisdiction is complying with the permit. Further, expenditures by an individual jurisdiction should not be compared with other jurisdictions as indicated on page 3, Part II, second paragraph.
2. We recommend utilizing a similar reporting format as used in the Eastern Washington Permit Annual Report. This would make it easier for the public and Ecology staff to review for compliance. We do not believe that Western Washington Phase II jurisdictions should be treated like Phase I jurisdictions for reporting requirements.
3. The report format does not account for actions taken prior to the permit. The questions should be reformatted to account for actions taken prior to the permit.
4. Please clarify why Secondary Permittees are allowed to decide on whether or not to submit an expenditure form.
5. Page 3 – reporting of indirect program administrative costs complicates the annual reporting and will lead to confusion by reviewers in determining the program costs. Each jurisdiction will charge the stormwater program for administrative overhead costs differently depending on what needs funded each year. Comparison of street sweeping activities in Federal Way with that in another city will show vast differences based on costs alone. Federal Way

contracts for this service while many have staff and equipment to conduct the sweeping activity. A better indicator is road miles swept vs. tonnage collected. That is a true indicator that can be partially used to compare programs.

6. Page 3, Instructions for Cost Reporting... - this is a prime example of attempting to compare programs based on expenditure. Federal Way has an extensive mapping program of our infrastructure. We will be refining our maps using recently purchased GPS units. How will we relate our “sunk” costs for this activity? If compared to a jurisdiction that has no maps that will need to spend a significant amount to develop them, will Federal Way be viewed as lacking?
7. Page 3, Instructions for Cost Reporting... - The specific components listed in the instructions do not match those in form 1.2. The instructions match the Phase I cost reporting form. Recommend listing the instructions for categories that match form 1.2 for Phase II jurisdictions.
8. Page 4, Structural Control Program – What type of structural controls are to be reported and why? Our capital program expenditures vary from year to year and include small facility improvements, stream restoration projects, conveyance improvements, regional stormwater control facilities, etc.
9. Tracking and reporting program expenditures is an unnecessary administrative task that will deflect resources from valuable surface water management functions. Expenditures and water quality outcomes are not necessarily linked. While it is easy to report total amount of utility collections, it is not reasonable to expect a segregation of tracking expenditures to the level of detail expected in this annual report. Dollars expended on a task does little to indicate the effectiveness of that task and will be difficult to use as a comparison between Permittees. This information will require a significant level of effort and will generate data of little value when attempting to determine the effectiveness of a program.
10. Form 1, Section S5.C.4.e requires we provide a summary of all copies made available along with dates and names of recipients. It is not reasonable to require Permittees conduct this activity on behalf of the Department of Ecology. This will take up staff time and resources and further subject local jurisdictions to increased third party liability. Please delete this requirement.
11. Form 1, Section S5.C.5.d appears to require reporting on every catch basin and inlet we clean. Suggest this be simplified to allow reporting by basin or sub-basin level and only by percentages cleaned.

#### **Appendix 6:**

1. Page 1, Step 2 – hydraulically is misspelled. Please clarify what is intended by “naturally attenuated”.

2. Page 1, Step 2 – the conditions that render a site hydraulically near can be interpreted to indicate that every site that discharges through a tightline or channel *regardless* of distance is near a feature ( 2.ii). Please set a distance limit.
3. Page 1, Step 2, - bulleting is not correct.
4. Page 1, Step 2, iii – this is confusing. How is this to be determined? How long does the flow have to go through a “significant shallow or adverse slope”? Define adverse slope.
5. Page 1, Step 3 – This process does not adequately take into consideration site conditions that clearly will not result in sediment transport, primarily related to highly infiltrative soils on bowl shaped sites. Some leeway needs to be given to the administrator to make an independent determination based on extenuating site conditions.



## COMMENTS ON S4A

Proposed section S4.A is unacceptable because it purports to make municipal separate storm sewer systems (MS4s) subject to a state law provision regarding wastewater treatment. The proposed subsection S4.A would make MS4s subject to RCW 90.48.520, which applies to discharge permits for "wastewater." The federal water pollution control act (CWA) and the Washington state water pollution control act (WPCA) distinguish between wastewater and storm water. Although they are each a "pollutant" when discharged into a water of the U.S., they are distinctly different pollutants; and the statutes and regulations contemplate that they will be regulated differently. This regulatory distinction reflects the real-world differences between sanitary sewer systems and storm sewer systems. The proposed subsection S4.A does not.

A primary component of the original CWA was its program to build or upgrade sewage treatment plants to provide secondary treatment. That part of the CWA focused on "publicly owned treatment works," or POTWs, which were (and are) defined as systems to collect and treat wastewater.<sup>1</sup> POTWs were (and are) subject to NPDES permitting requirements because their outfalls constitute "point sources" under the CWA.<sup>2</sup> Much later, amendments to the CWA rendered certain MS4s subject to the NPDES requirement as well.<sup>3</sup> The federal regulatory definition of "MS4" specifically excludes treatment works that handle wastewater.<sup>4</sup> The regulations promulgated under the CWA amendments further define the term "storm water."<sup>5</sup> Under federal law, then, MS4s are not treatment works; and storm water is not wastewater.

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<sup>1</sup> See 33 U.S.C. §1292(2)(A)-(B) (defining "treatment works") see also 40 C.F.R. §122.2 ([the term] "*POTW*" is defined at § 403.3 of this chapter." (italics in the original; bracketed material added); see also 40 C.F.R. §403.3(o):

The term *Publicly Owned Treatment Works* or POTW means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

<sup>2</sup> See 33 U.S.C. §1362 (defining "point source").

<sup>3</sup> See 33 U.S.C. §1342(p).

<sup>4</sup> See 40 C.F.R. §122.26(b)(8) (italics in the original; underlining added):

*Municipal separate storm sewer* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
- (ii) Designed or used for collecting or conveying storm water;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

<sup>5</sup> 40 C.F.R. §122.26(b)(13) ("*Storm water* means storm water runoff, snow melt runoff, and surface runoff and drainage.") (italics in the original).

The WPCA and its companion statutes are consistent with the federal CWA. State law recognizes that wastewater comprises water and wastes discharged from homes, businesses and industry to the sewer system, where it is processed by treatment plants such as publicly owned treatment works.<sup>6</sup>

It would be contrary to the structure of the CWA and the WPCA to apply wastewater standards to MS4s. The permit regimes for wastewater and storm water are not interchangeable.<sup>7</sup> This regulatory distinction reflects the real-world differences between sewer systems and storm sewer systems. Treatment works that handle wastewater properly receive individual NPDES permits conditioned on individual plant performance measures. This is consistent with their basic structure, which typically consist of large but well-documented conveyance systems that terminate in very few treatment plants with effluent and outfalls that can be sampled and monitored with relatively little difficulty. In contrast, MS4s can consist of complex small-scale drainage, piping and outfall systems that drain at numerous locations, many of which are not readily accessible, and in some cases may not be particularly well-documented. The nature of MS4s and their effluent—open to the public and the environment, exposed to the vagaries of interstate and international travel—also makes it very difficult (if not impossible) to control what goes into them.

It was not by accident that Congress specified that regulated MS4s "reduce the discharge of pollutants to the maximum extent practicable."<sup>8</sup> The "maximum extent practicable" (MEP) requirement in 33 U.S.C. §1342(p)(3)(B)(iii) replaces the water quality standard requirements of §1311 and unambiguously demonstrates that Congress did not require MS4s to comply strictly with §1311(b)(1)(C).<sup>9</sup> The MEP requirement stands in stark contrast to the CWA's stated goal that discharges of pollutants to waters of the U.S. be "eliminated" by 1985.<sup>10</sup>

Against this statutory backdrop, it seems plain that RCW 90.48.520 does not and should not apply to MS4s. The very title of the section ("Review of operations before issuance or renewal of wastewater discharge permits") indicates that it is aimed at POTWs and other wastewater dischargers, not MS4s and other storm water dischargers. And the requirements set forth in RCW 90.48.520—limits on discharges of specific chemicals, limits on overall toxicity, reliance on bioassays, etc.—indicate that the Legislature contemplated discharges that could be readily monitored, assessed, and controlled. MS4s are not readily monitored, assessed, or controlled. POTW outfalls are.

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<sup>6</sup> See 90.46.010(7) (defining "wastewater" for purposes of reclaimed water act) ("Wastewater means water and wastes discharged from homes, businesses, and industry to the sewer system."); see also WAC 173-221A-030 (defining "wastewater" for purposes of waste permit regulations) ("Wastewater" means the water or liquid carried waste. These wastes may result from any process or activity, including but not limited to, of industry, manufacturer, trade, business, development of any natural resource, or from animal operations such as feed lots, poultry houses, dairies, or fish rearing operations. The term also includes contaminated storm water and leachate from solid waste facilities.); see also WAC 173-224-030 (defining stormwater for purposes of wastewater discharge permit fees) "Storm water" means an industrial operation or construction activity discharging storm water runoff as defined in 40 CFR 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p)(2)(E).

<sup>7</sup> For example, compare 40 C.F.R. §122.21(a)(2)(i)(B) (POTW application requirements); 40 C.F.R. §122.26(d) (large and medium MS4 application requirements).

<sup>8</sup> 33 U.S.C. §1342(p)(3)(B)(iii).

<sup>9</sup> *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1165 (9<sup>th</sup> Cir. Az 1999) (stating same).

<sup>10</sup> 33 U.S.C. §1251(a)(1).

Finally, RCW 90.48.520 was enacted in April of 1987.<sup>11</sup> It replaced an earlier statute, which required Ecology to study the feasibility of reviewing and updating existing standards for wastewater treatment.<sup>12</sup> Ecology told the Legislature that it would be expensive to revise existing standards for wastewater treatment, and that it would be better to simply enact new standards.<sup>13</sup> The Legislature responded by enacting RCW 90.48.520. The federal MS4 permit scheme was added to the federal CWA just a few weeks earlier, in February of that same year.<sup>14</sup> Prior to the MS4 scheme, there was no CWA mandate to control municipal storm water runoff.<sup>15</sup> Even after the MS4 requirements were added, most storm water discharges did not need an NPDES permit until after 1994.<sup>16</sup> It is hardly conceivable that in 1987 the Washington Legislature intended RCW 90.46.520 to apply to then-unregulated storm water discharges. Rather, the Legislature authorized Ecology to enact new wastewater regulations for POTWs and other wastewater treatment providers.

The requirements in RCW 90.48.520 do not belong in a general MS4 permit. The sprawling nature of MS4s renders it virtually impossible to "limit the discharge of specific chemicals" to or from MS4s as would be required under that statute. It would require an enormous infusion of money (potentially billions of dollars) and time (potentially decades) to reinvent MS4s to treat runoff to the level of the treatment plants contemplated in RCW 90.48.520. Such an effort would be equivalent to the original CWA mandate to upgrade wastewater treatment plants to secondary treatment. Surveillance and social initiatives to keep pollutants out of the storm water could potentially cost even more.

Policy initiatives of this magnitude should be instigated through a change in the law by Congress or the state Legislature, not through an obscure condition in an administratively issued general permit. If Ecology wants to require POTW-level treatment of storm water, then Ecology should seek a change in state law, and the Legislature should be prepared to finance the work—and manage the public process to deal with the impacts of the projects. To do otherwise would result in an unfunded mandate to local jurisdictions operating MS4s.<sup>17</sup>

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<sup>11</sup> See 1987 Laws of Washington Ch. 500 §1 (ESHB 499).

<sup>12</sup> See 1987 Final Legislative Report for ESHB 499.

<sup>13</sup> *Id.*

<sup>14</sup> See P.L. 100-4, Title IV §401-405 (February 4, 1987), 101 Stat. 65-69.

<sup>15</sup> See, e.g., *Defenders of Wildlife v. Browner*, 191 F.3d 1159 at 1163 ("Initially, the EPA determined that [storm water] discharges generally were exempt from the requirements of the CWA.").

<sup>16</sup> *Id.* (citing 33 U.S.C. §1342(p)).

<sup>17</sup> See, e.g., *City of Tacoma v. State*, 117 Wn.2d 348, 816 P.2d 7 (1991); RCW §43.135.060.



**Regional Road Maintenance ESA Forum**  
**155 Monroe Ave NE, Renton Washington 98155-4199**

May 12<sup>th</sup>, 2006

Bill Moore  
WA Department of Ecology  
Water Quality Program  
PO Box 47600  
Olympia, WA 98504-7600

RE: Western Washington Municipal NPDES Stormwater Comments

Dear Mr. Moore:

The Regional Road Maintenance ESA Program Stormwater Committee has reviewed the Western Washington Phase II Stormwater Draft Permit your group published for public review on February 15<sup>th</sup>, 2006. We wish to thank you for the opportunity to do this review. Our detailed comments on this permit are in the attached document. It is important that the permit be effective and achievable. The comments set forth in this letter and attachment are made to ensure that the time, effort, and money spent on this permit are used effectively to target improvements in water quality in Washington State. There are several general areas that are of serious concern to us and they are addressed below.

- **The Definition of Illicit Discharge** – The term “Discharge” is defined on page 44, line 37-38, *“for the purpose of this permit means, unless indicated otherwise, any discharge from a MS4 owned or operated by the permittee.”* The definition of Illicit Discharge as found on page 45, lines 24-27 should be changed to be consistent with the definition of discharge. This committee recommends that “Illicit discharge” means any discharge to a municipal separate storm sewer from a MS4 that is not composed entirely of storm water except discharges pursuant to a NPDES permit; other than the NPDES permit for discharges from the municipal separate storm sewer and discharges resulting from fire fighting activities.
- **Pre-developed Forested Conditions** – The permit requires that mitigated stormwater flows meet a predevelopment forested condition. Conditions in urbanized and developed areas make this requirement unattainable and would put permittees in violation of their permit leaving them legally vulnerable. The mitigation requirements in the draft permit leaves jurisdictions vulnerable to “takings” claims. The *Nollan vs. California Coastal Commission* and *Dolan v. City of Tigard* cases, as well as a March 1995 memorandum from the State Attorney General’s Office specify that *“a permit condition which imposes substantial costs or limitations on property uses could be a taking. In assessing whether a regulation or permit condition constitutes a taking in a particular circumstance, the courts will consider the public purpose of the regulatory action along with the extent of reduction in use of and economic impact on the property. The burden on the property owner must be roughly proportional to the adverse public impact sought to be mitigated.”* This mitigation impact appears to contradict the above guidance from the Attorney General.

The committee’s recommendation is that the project proponent must mitigate flows to the actual predevelopment land use condition. This change is still in keeping with the anti-degradation water quality standard since it would not result in a lowering of the current water quality. This definition is also consistent with the December 8, 1999 Federal Register publishing of the Phase II rules page 68761: *“Pre-development refers to runoff conditions that exist onsite immediately before the planned development activities occur. Pre-development is not intended to be interpreted as that period before any human-induced land disturbance activity has occurred.”*

- **Outside Documents** – The permit cites outside documents such as the “2005 Stormwater Management Manual for Western Washington”; and “*Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*, Center for Watershed Protection, October 2004.” Both documents are cited as requirements and have not been through a regulatory process such as public review. As such they cannot be mandated as conditions through permit issuance nor serve as regulatory instruments. Ecology must allow that wherever the permittee is directed to outside documents that it is clearly stated that these are recommendations only and that other alternatives or equivalents are offered. References to the Western Washington Stormwater Manual must include language that references only the mandatory sections of the manual, and not the recommended sections or appendices. Permittees are not required to adopt the whole manual by reference alone. Appendix I continues to refer back to sections of the Manual that are not in the appendices. Ecology needs to ensure that all parts referenced in the Appendix text are contained within the document.
- **Annual Cost Tracking** – This committee does not see the value in the tracking of expenditures. The permit fact sheet states that “Cost data are needed to make determinations of practicability, compare effectiveness of programs and gauge budget and assistance needs.” Cost tracking is not a valid measure to gauge the Maximum Extent Practicable (MEP) standards established in this permit. Each jurisdiction has different organizational structures and accounting practices so reported costs will be incomparable. Therefore, it is improbable that Ecology will be able to compare reported costs and effectiveness, even for like programs, across municipalities. Further, it is not in this permit’s purview to gauge the permittees’ budgets or assess the need for assistance since Ecology and the Legislature have clearly indicated that funding will not be provided (above a minimal amount) for the compliance of the permit. For these reasons, the annual cost tracking requirement should be removed from the permit requirements. Cost tracking will require a significant amount of effort by agencies to modify their accounting practices and collect the data and the information will be of little or no value.
- **Catch Basin Inspection Program** – The intent of the catch basin inspection program should be outcome based and focus on allowing public agencies the flexibility to have a program that meets maintenance standards. This committee recommends the permit allow the expertise of local agencies in determining appropriate inspection program. Based on the experience of the local municipal employees, this approach would be a documented inspection program. The purpose of the inspection program is to protect water quality by examining the functionality and maintenance needs of the system and should not be based on inspecting every catch basin or stormwater facility within a given period of time. Further, the reporting requirement should be based on inspection program parameters and not solely on the number of catch basins inspected over a period of time. This committee requests that the “circuit basis” inspection program as cited in the Phase I Municipal Stormwater Permit in S5.C.9.b.iv.(1) be added to this permit.

There are concerns that the Department of Ecology does not have the staffing in place to properly support this permit program. The exposure to third party lawsuits will increase as a result of this permit without adequate support from Ecology. The permit should only include elements that can be accomplished by Ecology and the permittee.

Mr. Bill Moore  
Washington State Department of Ecology  
August 5, 2005  
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We wish to express our thanks and appreciation for the opportunity for this review. If you have any technical questions related to these issues please contact Douglas Navetski, the Stormwater Committee Chair at (206) 296-7723. We look forward to working with you on the implementation of this permit in a way that provides protection to the environment and uses solutions that are effective and attainable by our programs.

Sincerely,

Debbie Arima  
Regional Road Maintenance ESA Forum Chair

Attachment

Cc: Regional Road Maintenance Forum Members

# **Exhibit A - Policy Statement to be Published in the Washington State Register**

## **Policy Statement**

The following represents the Department of Ecology's policy regarding the limitations, and proper use of the Stormwater Management Manual for Western Washington.

### ***The Stormwater Management Manual for Western Washington is Not a Regulation***

The Manual does not have any independent regulatory authority and it does not establish new environmental regulatory requirements or standards. The Manual is a guidance document which provides local governments, state and federal agencies, developers and project proponents with a set of stormwater management practices to assist in the design of stormwater site or pollution prevention plans. Other stormwater technical guidance documents have been prepared or approved by Ecology, and the current list of approved stormwater technical guidance documents can be found on Ecology's website, at <http://www.ecy.wa.gov>. If these practices are implemented correctly, Ecology believes they should result in compliance with existing regulatory requirements for stormwater – including compliance with the Federal Clean Water Act, Federal Safe Drinking Water Act and State Water Pollution Control Act.

### **Presumptive vs. Demonstration Approach**

Following the Manual (the presumptive approach) or other technical guidance documents approved by Ecology, is not the only way to properly manage stormwater runoff. The Manual or other stormwater technical guidance documents approved by Ecology, are intended to provide project proponents, regulatory agencies and others with technically sound stormwater management practices which are *presumed* to protect water quality and satisfy the state AKART requirement. All project proponents have the option of not following the stormwater management practices in the Manual or other technical guidance documents approved by Ecology. However, if a project proponent chooses not to follow the practices in the Manual or other technical guidance documents approved by Ecology, then the project proponent may be required to individually *demonstrate* that the project will not adversely impact water quality and show that the alternative approach is protective of water quality and satisfies state and federal water quality laws. In this case, whether the project proponent is required to demonstrate compliance with environmental laws or not will depend on the underlying project approval or permit requirements established in federal, state and local laws, regulations and ordinances.

Included within the Stormwater Management Manual for Western Washington are provisions for Adjustments to the minimum requirements in the Manual (Volume 1, chapter 2.7). There are also provisions for Exceptions and Variances to the minimum requirements in the Manual (Volume 1, chapter 2.8). The provisions for adjustments, exceptions and variances within the Manual are available to all project proponents, including local governments, that follow the Manual. In addition, project proponents or permittees may select BMPs which are functionally equivalent to BMPs in the manual in lieu of strict adherence to the Manual BMPs. If required

by a permit or other authorization, project proponents or permittees may be required to demonstrate functional equivalency.

Both the presumptive and demonstrative approaches are based on and result from existing federal and state laws that require stormwater treatment systems to be properly designed, constructed, maintained and operated to:

- Prevent pollution of state waters and protect water quality, including compliance with state water quality standards;
- Satisfy state requirements for all known available and reasonable methods of prevention, control and treatment (AKART) of wastes prior to discharge to waters of the state; and
- Satisfy the federal technology based treatment requirements under 40 C.F.R. part 125.3.

Under the demonstration approach, the expectations for providing technical justification of stormwater management practices will depend on the complexity of the individual project and the nature of the receiving environment. In each case, the project proponent may be asked to document to the satisfaction of the permitting agency or other approval authority that the practices they have selected will result in compliance with the water quality protection requirements of the permit or other local, state, or federal water-quality-based project approval condition.

When a discharge permit or other water-quality-based project approval is required from the Department of Ecology, project proponents are required to document the technical basis for the design criteria used to design their stormwater management BMPs. This includes: how stormwater BMPs were selected; the pollutant removal performance expected from the selected BMPs; the technical basis for the performance claims for the selected BMPs; and an assessment of how the selected BMPs will comply with state water quality standards and satisfy state AKART requirements under chapter 90.48 RCW and the federal technology-based treatment requirements.

Project proponents who choose to follow the stormwater management practices contained in approved stormwater technical manuals are presumed by Ecology to have satisfied this demonstration requirement and in most cases will not be required to provide technical justification to support the selection of BMPs for the project. Following the stormwater management practices in this Manual or other technical guidance documents approved by Ecology means adhering to the guidance provided for proper selection, design, construction, implementation, operation and maintenance of BMPs.

### **How is the Manual implemented?**

Local government staff may use the Manual as a reference for developing stormwater requirements for new development and re-development, reviewing stormwater site plans; checking source control, runoff treatment and flow control facility designs; and for providing technical advice in general. Private industry may use the Manual for information on how to develop and implement stormwater site plans and as a reference for technical specifications of Best Management Practices (BMPs) to prevent and control stormwater pollution.

The Manual itself has no independent regulatory authority. The Minimum Requirements in chapter 2 and technical guidance in the Manual only become required through:



- Ordinances and rules established by local governments; and
- Permits and other authorizations issued by local, state, and federal authorities.

In the absence of a permit or other regulatory requirement local jurisdictions may adopt and apply all or a portion of the Minimum Requirements, thresholds, definitions, BMP selection processes, and BMP design criteria of this Manual through local ordinances. Local jurisdictions adopting only portions of the Manual or other technical guidance documents approved by Ecology may consider adopting an alternative approach similar to the demonstration approach described in this statement. Staff at local governments and agencies with permitting jurisdiction may use this Manual or other technical guidance documents approved by Ecology in reviewing Stormwater Site Plans, checking BMP designs, and providing technical advice to project proponents. Such use by local governments may consider local stormwater issues and allow for site-specific analyses and the application of professional judgment.

Federal, state, and local permits may refer to this Manual or the BMPs contained in this Manual. In those cases, elements of the Manual or the Manual itself may become permit requirement only if the authorities and standards under which the permit is issued support such a requirement. It is not permissible or appropriate to include the minimum requirements, thresholds, definitions, BMP selection processes, and BMP design criteria of this Manual as permit conditions or use the Manual as a review standard solely because they are published in the Manual or part of the Manual.

### **Questions?**

If there are questions about the proper use and application of Ecology's Stormwater Management Manual for Western Washington please contact the Department of Ecology's Water Quality Program at (360) 407-6000.